

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Application No.9211 of 2019

M/s.Kotak Mahindra Bank Limited,
Rep. by its Assistant Legal Manager /
Authorised Signatory, R.Vasu,
8th Floor, TVH Agnitio Park, Zone 2,
Old Mahabalipuram Road,
Kandanchavadi, Chennai - 600 096.

.... Applicant

versus

1.R.Senthil Kumar

2.S.Thilagavathy Senthil Kumar

....

Respondents

Prayer: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 9(2)(e) of the Arbitration and Conciliation Act, 1996, to pass an order appointing Mr.Senthil Prabhu, Senior Manager, Kotak Mahindra Bank Ltd., as Receiver to seize and take possession of Commercial Vehicles - Heavy Commercial Vehicle - Ashok Leyland Limited-CB_AL CG1616 CAB Chassis Goods bearing the Registration Number of the Vehicle is KA01AF9809 bearing with Engine number of the hypothecated Vehicle is GXEZ416595 and Chassis number is MB1A3CFD3GEXV8489 lying at the address of the respondents 1 and 2 or wherever and to handover to the applicant in as is where is condition.

For Applicant : Mr.K.K.Murrallitharan

ORDER

This application has been filed by the applicant, seeking a direction to appoint Mr.Senthil Prabhu, Senior Manager, Kotak Mahindra Bank Ltd., as Receiver to seize and take possession of Commercial Vehicles - Heavy Commercial Vehicle - Ashok Leyland Limited-CB_AL CG1616 CAB Chassis Goods bearing the Registration Number of the Vehicle is KA01AF9809 bearing with Engine number of the hypothecated Vehicle is GXEZ416595 and Chassis number is MB1A3CFD3GEXV8489 lying at the address of the respondents 1 and 2 or wherever and to handover to the applicant.

2. The respondents availed of loan from the applicant for purchase of vehicle and executed a loan agreement No.CV3127228 dated 10.08.2016, for a sum of Rs.16,38,000/- to be paid in 57 monthly installments and the first installment commenced from 20.10.2016 and the re-payments were to run till 20.06.2021. As on 25.11.2019, a sum of Rs.8,10,286.78 is due and payable by the respondents. In terms of the loan agreement executed by the respondents, the applicant is entitled to re-possess the vehicle in the event of default committed by the respondents. It is submitted that the continued use of the vehicle by the respondents would depreciate its value.

3. Notices sent to the respondents were served and an affidavit of service is also filed to that effect. Though the names of the respondents are printed in the cause list, there is no representation for them either in person or through counsel.

4. Upon considering the facts and circumstances of the case, this Court is satisfied that the applicant has made out a *prima facie* case in its favour and accordingly, Mr.Senthil Prabhu, Senior Manager, Kotak Mahindra Bank Ltd., is appointed as Receiver to take custody of the vehicle. The receiver will be entitled to take possession of the vehicle from the respondents or its agent or any one in possession thereof. If necessary, the Receiver shall get police assistance and the Station House Officer of the concerned Police Station, within whose jurisdiction the vehicle is found, will render requisite assistance for this purpose.

5. The agreement entered into between the applicant and the respondents provides for arbitration in the event of disputes and differences between the parties. It is submitted by the learned counsel for the applicant that proceedings for arbitration have been initiated and are pending in Arbitration

case. The Receiver shall preserve the vehicle without alienating or encumbering thereof till the arbitration proceedings are concluded. However, in case the respondents makes payment of the outstanding installments, the Receiver shall release the vehicle to the respondents. The receiver shall seize the vehicle within a period of three(3) weeks from the date of receipt of a copy of this order.

6. With the above direction, this application is closed.

01.09.2020

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The counsel for the applicant is permitted to receive the certified copy of the order of the Receiver and communicate the same to the Receiver.

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N.SATHISH KUMAR, J.

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